

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 05, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL URBINA,

Defendant.

No. 1:20-CR-02049-MKD

ORDER ACCEPTING GUILTY PLEA
AND SETTING SENTENCING
SCHEDULE

On April 4, 2023, Miguel Urbina appeared before the Court and entered pleas of guilty to Counts 1, 4 and 6 of the Superseding Indictment filed on October 12, 2022, charging him with production and attempted production of child pornography, in violation of 18 U.S.C. § 2251(a),(e) (Count 1); production and attempted production of child pornography, in violation of 18 U.S.C. §§ 2, 2251(a),(e) (Count 4); and possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B), (b)(2) (Count 6) . Defendant was represented by Craig Webster and Jennifer Barnes. Assistant United States Attorney Michael Murphy appeared on behalf of the United States.

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1 The Court finds that Defendant is fully competent and capable of entering an
2 informed plea, that Defendant is aware of the nature of the charges and
3 consequences of the plea, and that the plea of guilty is knowing, voluntary, is not
4 induced by fear, coercion, or ignorance, and is supported by an independent basis
5 in fact establishing each of the essential elements of the crime. Therefore,
6 Defendant's plea of guilty is accepted.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. A sentencing hearing is set for **July 11, 2023, at 9:00 a.m.**, in Yakima
9 Courtroom 324. Absent truly exigent circumstances, the Court will not consider a
10 request for a continuance of sentencing unless: (1) the request is made by written
11 motion, (2) in accordance with LCivR 7, and (3) the motion and supporting
12 declaration are filed at least seven (7) days before the scheduled sentencing
13 hearing.

14 2. Prior to the change of plea hearing, counsel for the United States filed a
15 brief in support of detention pending sentencing should the Defendant plead guilty
16 to crimes charged in the Superseding Indictment (ECF No. 163). Following the
17 Court's acceptance of the Defendant's pleas of guilty to Counts 1, 4 and 6, the
18 Defendant did not oppose the United States' request for detention. The Court orally
19 granted the request and ordered the Defendant be remanded to the custody of the
20 U.S. Marshals Service pending sentencing in this matter. **If a sentence of**

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1 **incarceration is imposed, Defendant shall remain in the custody of the U.S.**
2 **Marshals Service.**

3 3. The United States Probation Office shall prepare a Presentence
4 Investigation Report (PSR) pursuant to Fed. R. Crim. P. 32(c).

5 4. Not later than **June 5, 2023**, the Probation Officer shall disclose the PSR
6 to Defendant, counsel for Defendant, and the United States. Disclosure of the PSR
7 shall be subject to the limitations imposed by Rule 32 of the Federal Rules of
8 Criminal Procedure.

9 5. Within 14 days of the disclosure of the PSR, counsel shall communicate
10 in writing to the Probation Office (and opposing counsel) any objections they may
11 have as to legal and factual errors or omissions; sentencing classifications;
12 sentencing guideline ranges; and policy statements contained in or omitted from
13 the report. Objections shall be numbered and identify the paragraph(s) to which
14 the objection applies. Objections shall address the PSR in sequential order,
15 beginning with the lowest numbered paragraph. If an objection is filed, the
16 Probation Officer shall conduct such additional investigation as is necessary to
17 assess the merits of the objection.

18 6. The Probation Officer shall submit the final PSR to the Court by **June**
19 **30, 2023**. The PSR shall be accompanied by an addendum setting forth any
20 objections counsel may have made, including those that have not been resolved,

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1 together with the officer's comments and recommendations thereon. The
2 Probation Officer shall certify that the contents of the report, other than the
3 sentencing recommendations, including any revisions or addenda, have been
4 disclosed to counsel for Defendant and the United States, and that the addendum
5 fairly states any remaining objections. Except with respect to any written objection
6 made as required above, the PSR and computations shall be accepted by the Court
7 as accurate. Upon a timely objection by Defendant, the United States bears the
8 burden of proof on any fact that is necessary to establish the base offense level.
9 The Court, however, for good cause shown, may allow that a new objection be
10 raised at any time before the imposition of sentence. In resolving any disputed
11 issues of fact, the Court may consider any reliable information presented by the
12 Probation Officer, Defendant, or the United States.

13 Nothing in this Order requires the disclosure of any portions of the PSR that
14 are not disclosable under Fed. R. Crim. P. 32. The PSR shall be deemed to have
15 been disclosed: (1) when a copy of the report is physically delivered; or (2) one
16 day after the report's availability for inspection is orally communicated; or (3)
17 three days after a copy of the report or notice of its availability is mailed to
18 counsel, whichever date is earlier.

1 7. Not later than **June 26, 2023**, counsel shall file and serve all motions and
2 memoranda pertaining to Defendant's sentence, including departures and
3 variances, and sentencing recommendations.

4 a. Counsel shall utilize the following format when preparing initial
5 sentencing memoranda which are limited to 20 pages (absent prior
6 Court permission to file an overlength brief): I. Offense Level &
7 Criminal History, II. Departures, III. 18 U.S.C. § 3553(a).

8 b. Under Section I. Offense Level & Criminal History, counsel shall
9 discuss whether the PSR's Total Offense Level calculations (not
10 including departures) and Criminal History calculation are correct or
11 incorrect, providing legal authority for the party's position.

12 c. Under Section II. Departures, counsel shall discuss whether a
13 downward and/or upward departure is warranted under the Guidelines
14 and provide legal authority for such position.

15 d. Under Section III. 18 U.S.C. § 3553(a), counsel shall discuss whether
16 the resulting guideline range provides a reasonable sentence
17 sufficient, but not greater than necessary to comply with the purposes
18 set forth in 18 U.S.C. § 3553(a)(2), considering the other factors listed
19 in § 3553(a).

e. **FAILURE TO FILE AND SERVE SENTENCING MATERIAL
BY THIS DATE, TO INCLUDE MOTIONS OR MEMORANDA
FOR UPWARD OR DOWNWARD DEPARTURE, WILL BE
DEEMED A WAIVER OF THE RIGHT TO DO SO.**

8. Not later than **July 5, 2023**, the opposing party shall file and serve its response limited to no more than seven (7) pages.

9. If Defendant intends to qualify for the safety valve, the parties must schedule a meeting to conduct a safety valve interview to determine if the Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) **no later than June 20, 2023**.

10. If either party intends to call witnesses or proffer exhibits at sentencing, witness and exhibit lists must be exchanged by the parties and provided to the Court no later than **July 5, 2023**.

11. Sentencings shall be scheduled for a total of 45 minutes. If it is believed that the sentencing hearing will last longer than 45 minutes, counsel shall contact Chambers no later than **July 5, 2023**.

12. All pending motions pertaining to Defendant are **DENIED as moot** and all pending hearing and trial dates pertaining to Defendant are **STRICKEN** from the Court's calendar.

1 13. By and through this Order, the District Court Executive is authorized to
2 accept Defendant's payment in the amount of \$100 per count, for a total of
3 \$300.00, toward Special Penalty Assessments.

4 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
5 this Order and provide copies to counsel, the United States Probation Office, and
6 the United States Marshals Service.

7 DATED April 5, 2023.

8
9 s/Mary K. Dimke
10 MARY K. DIMKE
11 UNITED STATES DISTRICT JUDGE
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